

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALBERT BAXTER	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
R.M. LAWLER, et al.	:	NO. 10-2369

ORDER

AND NOW, this 22nd day of December, 2010, upon careful and independent consideration of the Petition for Writ of Habeas Corpus (Docket No. 1), the respondents' Response (Docket No. 12), the petitioner's memorandum and various replies in support of his petition, and the respondent's replies thereto, and after review of the Report and Recommendation of United States Magistrate Judge Jacob P. Hart (Docket No. 20), IT IS HEREBY ORDERED that:

1. The petitioner's objections are OVERRULED.
2. The Report and Recommendation is APPROVED and ADOPTED.
3. The Petition for Writ of Habeas Corpus is DENIED.
4. There is no basis for the issuance of a certificate of appealability.

The Report and Recommendation concludes that the Petition for Writ of Habeas Corpus is time-barred under AEDPA's one-year statute of limitations. The Court has reviewed the petitioner's objections. None provides a basis to toll the statute of limitations. The petitioner's objections do not go to

the substance of the Report and Recommendation, but instead set forth new allegations that Judge Fleisher's November 7, 2007 order sentencing the petitioner to two to four years confinement for violating his probation was improperly motivated by the judge's desire to punish the petitioner for failing to pay certain undefined "court costs."

As the Report and Recommendation notes, the petitioner was present at the November 7, 2007 hearing at which he was sentenced and a clearly marked order was issued on that same date. Any appeal from that order should have been filed by December 7, 2007, and the time for filing a petition for writ of habeas corpus ended on December 8, 2008. The petitioner offers no justification for the delay of almost one and half years before filing the instant petition, and presents no facts that would justify equitable tolling of the statute of limitations.

Accordingly, the Court approves and adopts the Report and Recommendation. The Petition for Writ of Habeas Corpus is denied

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.